

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TOMASA RUELAS)	
Claimant)	
VS.)	
)	
CONAGRA BEEF COMPANY)	Docket No. 253,296
Respondent)	
Self-Insured)	

ORDER

Respondent appeals the October 10, 2002 Award of the Administrative Law Judge Pamela J. Fuller. Claimant was awarded a 34.41 percent permanent partial general body disability based upon a 27.65 percent loss of task performing abilities averaged with a 41.16 percent loss of wages. The Appeals Board (Board) heard oral argument on April 2, 2003. Stacy Parkinson appeared and participated in this matter as Board Member Pro Tem.

APPEARANCES

Claimant appeared by her attorney, Stanley R. Ausemus of Emporia, Kansas. Respondent, a qualified self-insured, appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those findings and conclusions herein. The Board adopts those findings and conclusions as its own. In so finding, the Board affirms the Administrative Law Judge's determination that claimant has suffered a 34.41 percent permanent partial general body disability based upon a 27.65 percent loss of task performing abilities averaged with a 41.16 percent loss of wages based on an imputed average weekly wage of \$266.

The Board rejects respondent's argument that claimant should be limited to her functional impairment for refusing the vocational assistance offered by Terrill & Associates with vocational rehabilitation consultant Dan R. Zumwalt.

While the Board acknowledges that offer was rejected by claimant, it is also noted that one week later, claimant requested the identical service be provided. That request was not granted by respondent. The Board finds that claimant did not act in good faith in refusing the initial offer of assistance, but also finds respondent's refusal one week later to provide the same assistance also failed to reach a level of good faith on respondent's part. The Board finds, however, that claimant's overall effort to find a job, post injury, was less than adequate.

The Administrative Law Judge's utilization of vocational expert Karen Crist Terrill's opinion that claimant would be able to earn \$266 a week is found to be the most credible opinion in the record, and the Board adopts same.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Pamela J. Fuller dated October 10, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation